**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**SPECIAL CIVIL APPLICATION No. 12549 of 2001**

**For Approval and Signature:**
**HONOURABLE MR.JUSTICE R.S.GARG**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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**CHUNILAL DALSUKHBHAI KHAMAR - Petitioner(s)**
**Versus**
**KADI KELAVANI MANDAL & 1 - Respondent(s)**

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**Appearance :**
NONE for Petitioner(s) : 1,
MR MEHUL H RATHOD for Respondent(s) : 1,
MS MANISHA LAVKUMAR ASST.GOVERNMENT PLEADER for Respondent(s) : 2,

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**CORAM : HONOURABLE MR.JUSTICE R.S.GARG**

**Date : 04/07/2007**

**ORAL JUDGMENT**

1. None for the petitioner. Mr.Mehul Rathod, learned counsel for the respondent No.1 and Ms.Manisha Lavkumar, learned Assistant Government Pleader for the respondent No.2.

2. Present petition has been filed by one Chunilal Dalsukhbhai Khamar, a teacher working in the school run by the respondent No.1. After attaining the age of superannuation, he made an application for payment of gratuity under Payment of Gratuity Act, the Controlling Authority vide its order dtd.17/1/2001 directed the respondent establishment to make payment of the gratuity. The order passed by the Controlling Authority was challenged by the respondent No.1 before the Appellate Authority. Along with the appeal, certain amount was deposited by them as a condition precedent. However, the appeal came to be allowed in October, 2001 and vide communication dtd.6/11/2001, present respondent No.1 was informed that the appeal had been allowed. When the respondent No.1 made an application to the Controlling Authority for withdrawal of the amount, which they had deposited at the time of filing of the appeal, the petitioner - teacher came to this court and secured further orders in his favour. It was submitted that the appellate authority was unjustified in placing reliance upon the Full Bench Judgement of this Court in the matter of Shantiben L. Christian Vs. Administrative Officer, reported in 2001 (2) G.L.R. 1626, specially when the

correctness of the said order was challenged before the Supreme Court.

3. This Court issued certain interim orders. It appears that during the pendency of this writ application, Full Bench Judgement of this Court, has been confirmed by the Supreme Court in the matter of Ahmedabad Private Primary Teachers Association Vs. Administrative Officer, reported in A.I.R. 2004 S.C. 1426, the Supreme Court affirmed the Full Bench view that the provisions of Payment of Gratuity Act (Act No.39 of 1972) are not applicable to a teacher, because, the word “employee” defined under sec.2(e) of the Act does not include teachers employed in school.

4. As the matter is concluded by the jugement of the Apex Court, I am unable to hold that the Controlling Authority was wrong in deciding the matter against the interest of the present petitioner.
5. The petition deserves to and is accordingly dismissed. Interim relief, if any, is vacated. No costs. .

(R.S. GARG, J.)

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